

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NOVA OCULUS PARTNERS, LLC,
f/k/a THE EYE MACHINE, LLC
41865 Boardwalk Avenue, Suite 204
Palm Desert, CA 92211

PETER POCKLINGTON
170 Gold Canyon Drive
Palm Desert, CA 92211

Civil Action No. _____

LANTSON E. ELDRED
74-900 Highway 111, Suite 127
Indian Wells, CA 92210

AMC HOLDINGS CO., LLC
170 Gold Canyon Drive
Palm Desert, CA 92211

Plaintiffs,

vs.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,
Serve:

Civil Process Clerk
Office of the United States Attorney for the
District of Columbia
555 Fourth Street, NW
Washington, DC 20530,

William Barr
Attorney General of the United States
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Securities and Exchange Commission
Office of the General Counsel
100 F Street, NE
Washington, DC 20549

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act)

For their complaint against the United States Securities and Exchange Commission (“SEC”), Plaintiffs allege as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to enjoin the SEC from improperly withholding agency records and to order the production of all improperly withheld agency records.
2. The records are responsive to Plaintiffs’ FOIA Request (“Request”) submitted to the SEC and amended as detailed below.
3. DOJ has failed to produce such responsive records.

Parties

4. Plaintiffs Nova Oculus Partners, LLC, f/k/a The Eye Machine, LLC and AMC Holdings Co., LLC are corporations incorporated in Delaware with principal place of business in California. Plaintiffs Peter Pocklington and Lantson E. Eldred are individuals with residence in California.

5. The SEC is an agency of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

Jurisdiction and Venue

6. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

Background

8. On April 30, 2018, Hinds & Shankman LLP, on behalf of Plaintiffs, submitted the Request to the SEC via the online portal. A true and correct copy of the Request is attached as Exhibit 1.

9. The SEC acknowledged receipt of the Request on May 1, 2018 and assigned the Request tracking number 18-01818-FOIA. A true and correct copy of the acknowledged receipt is attached as Exhibit 2.

10. On May 2, 2018, the SEC responded requesting clarification of the Request. A true and correct copy of the SEC response is attached as Exhibit 3.

11. James A. Hinds, Jr., an attorney representing Plaintiffs, responded on May 4, 2018 providing clarification and adding certain email messages to the Request. A true and correct copy of Mr. Hinds' response is attached as Exhibit 4.

12. On June 21, 2018, Felecia Taylor, FOIA Lead Research Specialist at the SEC FOIA Office, stated that the SEC would be unable to respond to the Request within the statutory time period due to "unusual circumstances" and invoked the ten-day extension. A true and correct copy of Ms. Taylor's response is attached as Exhibit 5.

13. In her response, Ms. Taylor also informed Mr. Hinds that the SEC identified non-public records concerning Nova Oculus Partners, LLC that may be responsive to the Request. *See id.* Ms. Taylor applied an estimate for reviewing e-mail communications based on an alleged "equivalent of 35.3 boxes of records" and preliminary estimate of review costs between "\$107,655.00 and \$129,198.00." *See id.* She also stated that the Request would be processed in the agency's First-in, First-out ("FIFO") track and "anticipate[d] that it may take thirty-six months or more before [the agency could] process a request placed in [its] FIFO track." *See id.*

14. On July 6, 2018, Mr. Hinds responded to Ms. Taylor's June 21, 2018 letter and requested a meet and confer to discuss the scope of the request, the proposed cost, and the timing of responding to the Request. A true and correct copy of Mr. Hinds' response is attached as Exhibit 6.

15. Mr. Hinds sent another letter to Ms. Taylor on July 25, 2018 reiterating Plaintiffs' request for a meet and confer to try to resolve the issues regarding the Request. A true and correct copy of Mr. Hinds' response is attached as Exhibit 7.

16. Mr. Hinds had a conference call with Ms. Taylor and David Henshall of the SEC FOIA Office on July 30, 2018. A few days later, on August 6, 2018, Mr. Hinds sent a follow-up letter to Ms. Taylor and Mr. Henshall confirming the agreement on the call to modify the descriptions of documents initially requested in the April 30, 2018 Request, and he provided the modified requests. A true and correct copy of Mr. Hinds' response is attached as Exhibit 8.

17. Mr. Hinds and Ms. Taylor emailed on August 15, 2018 regarding the modified requests and the types of searches that the SEC could conduct. A true and correct copy of the email correspondence is attached as Exhibit 9. Ms. Taylor conveyed her discussions with the SEC's Office of Information Technology ("OIT") regarding the types of searches. *See id.*

18. On August 24, 2018, Mr. Hinds responded to Ms. Taylor's email of August 15, 2018 and proposed new search requests based on the information Ms. Taylor learned from OIT. A true and correct copy of Mr. Hinds' response is attached as Exhibit 10.

19. Ms. Taylor responded to the letter on August 27, 2018, stating that the agency would request that OIT conduct a search and they would notify Mr. Hinds of the volume of records located. A true and correct copy of Ms. Taylor's response is attached as Exhibit 11.

20. Mr. Hinds sent a letter to Ms. Taylor and Mr. Henshall on September 11, 2018 following up on his August 24, 2018 correspondence regarding the number of "hits" generated in the SEC's search. A true and correct copy of Mr. Hinds' letter is attached as Exhibit 12.

21. On September 12, 2018 and September 21, 2018, Mr. Hinds communicated via email with Ms. Taylor's colleague, Jeffrey Ovall, the FOIA Branch Chief, regarding the

remaining issues with the Request, and Mr. Ovall conveyed results from OIT showing the number of “hits” (or e-mails) that were generated using the search terms and dates in Mr. Hinds’ August 24, 2018 letter. A true and correct copy of the e-mail correspondence is attached as Exhibit 13.

22. Mr. Hinds, Ms. Taylor, and Mr. Ovall spoke on a conference call on September 27, 2018. Mr. Hinds then sent another amended request to Ms. Taylor and Mr. Ovall. A true and correct copy of the amended request is attached as Exhibit 14. This amended request is the subject of this appeal, and it requests the following records:

1. Jan 1, 2013 through the present, for the e-mail address of Marshallmasko@amerivision.us. (80 records located)
2. Jan 1, 2013 through the present, for the e-mail address of Marshall.ameritech@gmail.com. (79 records located)
3. Jan 1, 2013 through the present, for the e-mail address for blairmowery@amerivision.us. (88 records located)
4. Jan 1, 2013 through the present, for the e-mail address for blair.ameritech@gmail.com (122 records located)
5. Jan 1, 2008 through the present, “Wasserman, Comden, Casselman & Esensten” (241 records located)
6. Jan 1, 2013 through the present, “Amerivision and International” (880 records located)
7. June 2011 through June 2012, “David and Casselman” (further modification following earlier search)

See id.

23. On October 10, 2018, Mr. Ovall responded to the September 27, 2018 amended request. A true and correct copy of Mr. Ovall’s response is attached as Exhibit 15. In his response, he stated that the SEC was “withholding records that may be responsive to your request under 5 U.S.C. § 552(b)(7)(A).” *See id.* Mr. Ovall asserted that the “exemption protects

from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities.” *See id.*

24. Mr. Oval further explained that the agency had not determined if other exemptions apply and reserved the right to assert other exemptions when Exemption 7(A) no longer applies. *See id.* Mr. Oval stated that our Clients had the right to appeal his decision to the SEC’s General Counsel under 5 U.S.C. § 552(a)(6) and 17 C.F.R. § 200.80(f)(1).

25. On December 21, 2018, Plaintiffs appealed the SEC’s adverse determination and detailed the SEC’s improper withholdings. A true and correct copy of Plaintiffs’ appeal letter and exhibits is attached as Exhibit 16.

26. The SEC denied Plaintiffs’ appeal by letter dated February 11, 2019 and received on February 21, 2019. A true and correct copy of the SEC’s denial is attached as Exhibit 17. The denial letter informed Plaintiffs of their right to seek judicial review of the determination by filing a complaint in the United States District Court for the District of Columbia. *See id.*

27. As such, Plaintiffs are filing this Complaint seeking the Court’s assistance.

COUNT I - FAILURE TO COMPLY WITH FOIA

28. Plaintiffs incorporate each of the foregoing paragraphs of this Complaint.

29. Pursuant to FOIA, 5 U.S.C. § 552(a), Plaintiffs have a statutory right to access the requested agency records.

30. The SEC, by and through its component agencies, has improperly withheld agency records responsive to Plaintiffs’ Request.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment for Plaintiffs and award the following relief:

- a. Enjoin the SEC from withholding the requested records and order the SEC to produce those records to Plaintiffs in accordance with FOIA, 5 U.S.C. § 552;
- b. Expedite the proceedings in this action;
- c. Award Plaintiffs their costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- d. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

March 8, 2019

/s/ Lisa Norrett Himes
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